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AMENDMENTS TO MERCHANT MARINE ACT, 1920

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Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1988]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1988) amendments to the Merchant Marine Act of 1920, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

PURPOSE OF THE LEGISLATION

The purpose of S. 1988 is to amend the application of the Jones Act with respect to vessels transporting sewage sludge and other valueless materials, vessels transporting dredged materials, and launch barges.

BACKGROUND AND NEEDS

Section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), commonly referred to as the Jones Act, reserves the coastwise transportation of merchandise to vessels built and documented in the United States. The Jones Act applies to transportation between points or places within the United States. However, questions have continually been raised as to where, within the jurisdiction of the United States, points or places exist and what constitutes merchandise for purposes of such "coastwise trade" that is subject to the Jones Act. The U.S. Customs Service is the official arbiter of whether a specific activity constitutes coastwise trade that is subject to the Jones Act, and that determination has become increas-

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ingly complex due to the evoluation of activities that were not contemplated when the Jones act was enacted. Generally, the intent of S. 1988 is to amend the application of the Jones Act and the Towing Act (46 App. U.S.C. 316(a)) so as to reflect that evolution with respect to the following classes of vessels: vessels transporting valueless materials; launch barges; vessels transporting dredged materials; and vessels used to tow the preceding classes of vessels.

VESSELS TRANSPORTING VALUELESS MATERIALS

In recent years, the safe and environmentally sound disposal of waste has become a national concern, and a trade has developed in the ocean transportation of valueless waste materials from points in the United States for dumping at sea.

However, in May 1986, in response to a request from Far East Levington Shipbuilding, Ltd., a Singapore shipyard, the Customs Service issued a ruling that transportation of sewage sludge to a point on the high seas for disposal was not subject to the Jones Act requirement that the vessel transporting such sewage sludge be built in the United States.

The ruling was requested coincident with a competitive procurement by the City of New York for the construction of four seagoing barges, in which several foreign yards participated. The barges were to be used to transport municipal sewage sludge to a deepwater disposal site, newly designated by the Administrator of the Environmental Protection Agency under the provisions of title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.), commonly known as the "Ocean Dumping Act." Pursuant to the Customs Service ruling that vessels used to transport sewage sludge were exempt from the domestic construction requirement of the cabotage laws and from State and municipal procurement requirements, the foreign shipyard subsidiary was ultimately determined to be the low bidder and was awarded the construction contract in May 1986.

Several domestic shipyards that were unsuccessful bidders and several towboat operators adversely affected by the Customs Service ruling challenged the City's contract award in the U.S. District Court for the Southern District of New York (*106 Mile Transport Associates* v. *Koch et al. (86 Civ.* 7190)). The plaintiffs' action was dismissed on motion for summary judgment on March 27, 1987. As a result, the growing trade in the transport of sewage sludge and other valueless material was opened to vessels that are not built in the United States.

LAUNCH BARGES

In recent years, development of our nation's petroleum resources located on the Outer Continental Shelf (OCS) has been occurring at ever increasing water depths, necessitating the fabrication of larger and larger production platforms. The transportation of platform jackets, the largest and heaviest part of production platforms, occurs aboard a launch barge which loads the jacket at any one of a number of fabrication yards along the coast and carries it to an offshore location where the temporarily floating jacket is launched into the sea before being towed to the production site where it is

then lowered to and secured to the sea floor. This two-phase transportation is known as dual-mode movement.

Under section 4(a) of the Outer Continental Shelf Lands Act of 1953 (OCSLA), 43 U.S.C. 1333(a), the laws of the United States are extended to "installations and other devices" which are attached to the seabed of the OCS for purposes of resources exploitation. The laws of the United States include the Merchant Marine Act of 1920, section 27 (Jones Act) of which requires the use of U.S.-built vessels to transport merchandise between any two points in the United States. Strictly interpreted, this law, when read together with the OCSLA, prohibits the transportation of platform jackets on foreign-built launch barges if the transportation is between (1) the fabrication yard and (2) "installations and other devices permanently or temporarily attached to the seabed", since both are "points or places in the United States."

The installation site for an offshore platform jacket sometimes contains a device (e.g., a well casing or template) submerged onto the seabed before the arrival of the platform jacket, in which case, the installation site is a coastwise point. For safety reasons, the platform jacket is never launched directly over any such installation or other device but is always launched some distance away. This is done so that the platform jacket can safely be towed and then rigged to floating equipment which lowers the platform jacket down to the seabed where it then is secured by piles to the sea floor. Until recently, the Jones Act requirement was not previously applied to such dual-mode movement. Nor does it apply to installation sites where there are no installations or other devices involved. As a result, until 1984, for practical purposes there was no legal prohibition against using foreign-built launch barges to transport platform jackets from U.S. fabrication yards to offshore locations.

In November 1984, however, the U.S. Customs Service, on its own initiative and without any statutory change, reversed its earlier rulings and prohibited such dual-mode movement and, in essence, required that U.S.-built launch barges be used to carry platform jackets from U.S. fabrication yards to offshore launch sites where installations or other devices are attached to the sea floor.

The problem this ruling has presented for the U.S. offshore industry is that existing U.S.-built launch barges are only capable of transporting and launching platform jackets up to a size of 6,300 long tons. Deepwater platforms range in size from about 6,000 to 60,000 long tons. Several existing foreign-built launch barges which were previously authorized for dual-mode transportation are capable of carrying the larger deepwater platform jackets, but are prohibited from doing so under the Customs Service ruling, unless the site on the OCS is "pristine," i.e., no installation or other device has already been emplaced.

Building new, larger launch barges in the United States is prohibitively expensive. According to Barnett & Casbarian, Inc., a Houston-based marine consulting firm, in a January 22, 1988 letter to Senator John Breaux, there are 12 launch barges throughout the world which have the capacity to launch a platform jacket of 12,000 long tons or more. While five of these vessels already fly a U.S. flag, none was built in the United States. As a result, none

can be used to transport platform jackets for installation at a point on the OCS.

Unless the Customs Service ruling is legislatively reversed, American leaseholders on the OCS will be forced to order their deepwater platform jackets from foreign fabricators, which are permitted to transport such jackets from the foreign port of fabrication and launch them on the U.S. OCS with foreign-built launch barges, since such transport is not between two points in the United States. This would result in a major loss of the market for offshore platform jackets to foreign fabricators, along with thousands of American jobs, particularly in the Gulf of Mexico where each of the many thousands of existing offshore platforms has been fabricated in the United States.

VESSELS TRANSPORTING DREDGED MATERIAL

Questions have been raised concerning the application of the Jones Act to the transportation of dredged material. Although the act of dredging is not considered trade, the transportation of dredged material, under certain circumstances, may be considered coastwise trade.

Dredged material can be classified as valuable or valueless, depending on the nature of the product and its intended use. This distinction is crucial because, under current interpretations of the law, the Jones Act only applies to the transportation of "merchandise" which has value, and it applies only to the transportation of such valuable material between points or places in the United States.

Locations beyond the territorial sea of the United States are usually not deemed "points or places in the United States" under the Jones Act. The Customs Service has ruled that the Jones Act is inapplicable to the transportation of dredged material, regardless of whether it has commercial value, between points in the Exclusive Economic Zone (EEZ) or between a point in the United States and a point in the EEZ, except when the coastwise laws are made applicable to artificial islands on, and installations or other devices attached to, the seabed of the OCS which have been erected thereon for the purpose of exploring for, developing, or producing resources from the OCS. Subject to those limited exceptions, any vessel that does not have coastwise trading privileges, including a vessel that is foreign-built and/or foreign-flagged, can transport dredged material from a point or place in the United States to a point in the EEZ as long as a part of the incipient artificial island does not rise beyond the mean high-water level. Similarly, it is possible for a foreign-built and/or foreign-flagged vessel to transport dredged material from a point or place on the EEZ to a point or place in the United States or to another point within the EEZ.

As with sewage sludge, the transportation of dredged material, regardless of whether it has commercial value, has developed into a substantial economic activity. As a result, there has been increasing concern that this trade should be included as part of the coastwise trade subject to the Jones Act requirements that vessels transporting these materials be constructed and documented in the United States.

Legislative History

S. 1988 was introduced December 21, 1987, by Senator Breaux. A hearing on the legislation was held by the Subcommittee on Merchant Marine on January 28, 1988. Among the witnesses testifying at the hearing were representatives of the Department of Transportation, U.S. Customs Service (Department of Treasury), the Shipbuilders Council of America and interested shipyards, the American Waterways Operators, the National Association of Dredging Contractors, and the Seafarer's International Union. In addition, written statements were received from numerous parties including the National Marine Engineers' Beneficial Association, the American Petroleum Institute, and several oil companies. On March 29, 1988, in open executive session, the Committee considered an amendment in the nature of a substitute to S. 1988, and without objection, ordered S. 1988 reported favorably as amended.

Summary of Major Provisions

S. 1988 provides for the following amendments to the Jones Act:

Vessels used to transport valueless material and dredged material, regardless of whether it has commercial value, must be constructed and documented in the United States to engage in the coastwise trade.

Certain foreign-built, U.S.-documented sewage sludge barges that are either presently in use by or are already under contract with a municipality as of the date of enactment of this legislation will be permitted to be used in the transportation of municipal sewage sludge. However, these barges may be used only for the transportation of municipal sewage sludge and may not be used or converted for use in any other trade.

Vessels employed to tow any barges transporting valueless material and dredged material, regardless of whether it has commercial value, must be constructed and documented in the United States.

The existing fleet of 12 foreign-built launch barges which have a launching capacity of 12,000 long tons or more would be permitted, under certain circumstances, to transport platform jackets between certain coastwise points.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 21, 1988.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1988, a bill to amend the Merchant Marine Act, 1920, and for other purposes, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, March 29, 1988. Enactment of this bill would have no significant impact on the federal budget. The bill may increase the expenses of local sewage authorities in some mid-Atlantic states, but such increases would not occur for several years.

S. 1988 would require that all barges and other vessels used to transport sewage sludge or dredge material from or to U.S. sites be constructed and documented in the United States. The bill would not apply to sewage sludge vessels already in use. Because the communities that currently use ocean disposal for their sewage do so at rates fixed over the next several years, and because the companies that provide this service are not expected to purchase any new vessels in the near future beyond the contract period, the impact of this bill would not be felt for at least five to ten years. At that time, however, disposal cost increases could be significant when compared to a sewage authority's total budget.

CBO is not able to determine the impact of the bill on governmental dredging activities because the extent of such an operations now or in the future cannot be estimated with any precision. To the extent that coastal states or communities employ dredging services in conjunction with public construction, their costs for these services would be likely to increase substantially if S. 1988 is enacted. Federal dredging costs are less likely to increase as a result of the bill's enactment because most federal dredging operations already employ American equipment.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

Because S. 1988 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1.—This section amends section 27 of the Merchant Marine Act, 1920. It modifies the penalty provisions for violations of the statute to permit the levy of a penalty in the amount of the value of the transportation provided or the actual cost of transportation, whichever is greater.

The section specifically applies section 27 to the transportation of all valueless material from a point or place in U.S. territory to a point or place on the high seas within the EEZ, as well as between any two points within those areas. The section modifies the definition of "merchandise" to include valueless material. As amended, section 27 would apply to all transport of valueless material between points within the territorial sea and within the EEZ.

This section further amends the Jones Act to apply to the transportation of any dredged material, regardless of whether it has commercial value. The purpose of the dredging amendment is to ensure that the transportation of all dredged material, within the defined areas, is considered to be coastwise trade.

Finally, this section would further amend the Merchant Marine Act, 1920, to exempt the transportation of any oil-and-gas-related platform jacket by a launch barge between points in the United States provided that:

(1) the launch barge has a minimum platform jacket launch capacity of 12,000 long tons;

(2) the launch barge is documented under the laws of the United States (U.S.-flag);

(3) the launch barge was built as of the date of enactment of this legislation;

(4) the platform jacket cannot be launched from any available vessel in the U.S. fleet of coastwise-certified launch barges with less than a launch capacity of 12,000 long tons; and

(5) at one of the two points in the United States there is an installation or other device attached to the seabed. Absent the existence of such installation or other device at the site on the OCS, coastwise-certified transport to a site on the OCS of any platform jacket is not required.

Section 1(b)(1) instructs the Secretary of Transportation to develop, maintain, and update an inventory of coastwise-qualified launch barges with a launch capacity of less than 12,000 long tons.

Section 1(b)(2) requires that, within 15 days of the date of enactment, the Secretary of Transportation publish in the *Federal Register* an initial inventory of coastwise-certified launch barges with a launch capacity of less than 12,000 long tons.

Section 1(b)(3) requires the Secretary of Transportation within 60 days of the date of enactment and periodically thereafter, to publish a current inventory of such lesser capacity coastwise-certified launch barges. Section 1(b)(1) requires that such list be periodically updated. Unless the list of launch barges of lesser launch capacity identified by the Secretary is timely published, such launch barges cannot be considered available. Thus, the burden is on the Secretary of Transportation, not the users of launch barges, to ensure that the list of such lesser capacity launch barges is kept up to date. It is the responsibility of owners and operators of such coast-

wise-certified launch barges of lesser capacity to notify the Secretary of Transportation of their desire to be included in the list. Potential users have the burden of consulting the list and making inquiries to determine whether a launch barge is "available." The Committee intends that a launch barge of lesser capacity not be deemed to be "available," unless it has been included on the list and it is available to perform the transport within the time requirements of the inquiring user. This legislation does not contemplate the Secretary of Transportation involving himself or herself in every transaction under this Act involving the use of launch barges.

The purpose of section 1(b) (1)–(3) is to promptly provide an official list of coastwise-certified launch barges, their platform jacket launch capacity, and other distinguishing characteristics, along with the owner or operator's name and address, so that all persons transporting platform jackets of a size small enough to be capable of being transported on "a launch barge of lesser capacity identified by the Secretary of Transportation" will know where the services of such launch barges can be obtained so that they can determine if one is available. On the other hand, if the weight of the platform jacket to be transported is greater than the launch capacity of any of the launch barges so identified by the Secretary of Transportation, then foreign-built launch barges may be used for their transportation so long as the launch barges meet the requirements of this Act, i.e., meet the five criteria set forth in the legislation.

Based on information submitted to the Committee by Barnett & Casbarian and the Maritime Administration, the following 12 foreign-built launch barges would qualify for the exemption from the Merchant Marine Act, 1920, provided by this legislation so long as they meet those five criteria:

Owner	Name	Maximum jacket weight launch capacity	Current flag
Heerema	H–109	33,000	Panama.
Heerema	H–110	22,000	Panama.
Heerema	H–114	22,000	Netherlands.
Heerema	H–851	66,000	Panama.
Hyundai	BNO.1006	17,900	S. Korea.
Kaiser	KSC700	40,200	USA.
McDermott	Intermac 600	15,600	USA.
McDermott	Intermac 627	22,300	USA.
McDermott	Intermac 650	40,200	USA.
McDermott	Oceanic 93	14,700	USA.
Micoperi	M–44	29,500	Italy.
Petrobras	BGL 2	15,600	Brazil.

Section 2.—This section makes a conforming amendment to the Towing Act (46 App. U.S.C. 316(a)) to ensure that the Jones Act is applicable to any towing of vessels transporting valueless material or dredged material, regardless of value, within and between the same points to which the Jones Act is made applicable by section 1.

Section 3.—This section permits the continued use for the transportation of municipal sewage sludge of foreign-built, U.S.-docu-

mented barges that are in use by or under contract with a municipality of the United States for that purpose on the date of enactment of this legislation. This grandfather provision will allow the barges to be used only for the transportation of municipal sewage sludge. It does not allow for their use in transporting any other material which would otherwise be subject to the Jones Act requirement that the vessels be built in the United States. The Committee intends that changes in circumstances, such as the termination, movation, or renewal of contracts, or changes in ownership or contract parties, not be deemed to affect the grandfathered vessels' status or ability to be used for the transportation of municipal sewage sludge by or under contract with a municipality.

Section 4.—This section has the effect of exempting any grandfathered sewage sludge barge under a contract with a municipality from the need for its operator who is also a subsidized operator under title VI of the Merchant Marine Act, 1936, to seek approval for the continued payment of subsidy while operating these barges, as would otherwise be required by section 805(a) of the Merchant Marine Act, 1936. The section leaves these vessels subject to the prohibition against diversion, to the operation of these barges, of any moneys, property, or other thing of value used in subsidized foreign commerce operations. Thus the prohibition applies in the same fashion as it would if the vessels were in the domestic commerce for which approval to operate had been granted.

Section 5.—This section would have the effect of grandfathering, under the new Jones Act coastwise trade requirements proposed for dredges by section 1 of this bill, any existing dredge that satisfies certain criteria indicating reliance upon current law. The Committee has been advised of one such dredge, the *Columbus*, owned and operated by B&B Dredging Company, and intends that it be included among the vessels grandfathered by this section. The *Columbus* was originally constructed in the United States, but was later sold foreign and therefore forfeited its coastwise trading privileges granted under the Jones Act. However, in accordance with administrative rulings of the Coast Guard and the Customs Service, the *Columbus* was later returned to the United States and was issued a Certificate of Registry by the Coast Guard endorsed with a restriction prohibiting its employment in the coastwise trade, which under current law does not include the transportation of valueless material. This provision is designed to allow the *Columbus* to engage in the activities for which it was documented under United States flag and would be prohibited from engaging in if this legislation is enacted. This language is not intended to expand B&B's present privileges for carriage beyond those permitted by coastwise trade laws existing at the time of enactment of this legislation.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

THE MERCHANT MARINE ACT, 1920

SECTION 27 OF THAT ACT

SEC. 27. That no merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the [Treasury] *Treasury, or the actual cost of the transportation, whichever is greater,* to be recovered from any cosignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by sections 18 or 22 of this Act:

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Provided further, That for the purposes of this section, supplies aboard United States documented fish processing vessels, which are necessary and used for the processing or assembling of fishery products aboard such vessels, shall be considered ship's equipment and not [merchandise.] *merchandise: Provided further, That for purposes of this section, the term "merchandise" includes valueless material: Provided further, That this section applies to the transportation of valueless material or any dredged material regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone: Provided further, That the transportation of any platform jacket in or on a launch barge between two points in the United States, at one of which there is an installation or other device within the meaning of section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)), shall not be deemed transportation subject to this section if the launch barge has a launch capacity of 12,000 long tons or more, was built as of the date of enactment of this proviso, and is documented under the laws of the United States, and the platform jacket cannot be transported on and launched from a launch barge of lesser launch capacity that is identified by the Secretary of Transportation and is available for such transportation.*

SECTION 4370 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 4370. Use of Foreign Vessels in United States Ports—

(a) TOWING UNITED STATES VESSELS; FINES AND PENALTIES.—It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels and not having in force a certificate of documentation issued under section 12106 or 12107 of title 46, United States Code, to tow any vessel other than a vessel

in distress, from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbors of such places[.], *or to tow any vessel transporting valueless material or any dredged material, regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Executive Economic Zone.* The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than $250 nor more than $1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of $50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit.

(b) through (e) * * *

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